

**IMPLEMENTATION IN DELAWARE OF THE
AMERICAN RECOVERY AND REINVESTMENT ACT**

Second Interim Report

January 29, 2010

INTRODUCTION

The Honorable Jack A. Markell
Governor, State of Delaware
820 N. French Street
Wilmington, DE

Dear Governor Markell:

The American Recovery and Reinvestment Act was signed into law by the President almost a year ago, on February 13, 2009. In asking me to coordinate implementation of ARRA in Delaware, you asked me to focus on two primary goals and a number of related goals. The two primary goals were (a) to ensure that Delaware sought all ARRA funds that it could responsibly seek, in order to help provide jobs and services to Delawareans, and (b) to ensure that Delaware responsibly monitored and tracked ARRA funds that were received.

This is the second quarterly report I have issued in connection with my implementation responsibilities. As with the first report¹, this report focuses on the following eight areas that measure our progress toward the two overall goals.

1. Have state agencies applied for all 'formula' and all appropriate competitive ARRA grants?
2. Has the state encouraged private actors to apply for ARRA grants?
3. Are ARRA funds received by the state being processed and spent efficiently given the need to scrutinize and carefully track expenditure of those funds?
4. Are state purchases with ARRA funds being reviewed to ensure that they are appropriate?
5. Are ARRA funds being properly tracked and reported?
6. Are jobs being created and retained at an appropriate rate?
7. Is the state operating with sufficient transparency with respect to ARRA funds?
8. Has the state made appropriate efforts to include women and minority owned businesses in stimulus opportunities?

My conclusions are:

1. With the ARRA grant application period nearing its conclusion, state agencies have applied for all formula grants, and all appropriate competitive grants.
2. The state continues to be aggressive about encouraging private actors to apply for ARRA funds.

¹ The first report can be found on the Delaware ARRA website at <http://www.recovery.delaware.gov/documents/Stimulus-Interim-Report-Governor.pdf>.

3. Most ARRA funds are being processed and spent as efficiently as is reasonably possible. Two programs that were identified in October as being deficient in this area are still deficient, and those programs need to take prompt implementation steps.
4. The state's oversight process for reviewing state purchases using ARRA funds continues to operate smoothly. While no system is foolproof, we believe Delaware has put in place the best possible review system its resources allow.
5. ARRA funds for which the state has oversight responsibility are being properly tracked and promptly reported.
6. Job creation and retention can only be estimated with a broad range due to the uncertainty inherent in making such estimates. Available data allows us to estimate that between 1,493 and 4,046 jobs have been created or retained in Delaware due to ARRA, and there are additional jobs created or retained for which a range is not possible given the absence of data.
7. The state has adopted an ambitious transparency policy for ARRA funds, and over the last three months the state's web site has been significantly upgraded to enhance the implementation of that transparency policy.
8. The state continues to make vigorous efforts to inform women and minority owned businesses of opportunities created by stimulus funds. However, it is difficult to track the ultimate success of these efforts due to limitations in the state's record-keeping procedures.

In order to save space, information that was related in my first interim report is not repeated in this report. It is recommended that persons reviewing this report also review the prior report in order to provide context for the information provided. We will continue to work diligently in these areas, and will provide you with additional status reports as appropriate.

Sincerely,

Lieutenant Governor Matthew P. Denn

GRANT APPLICATIONS

As reported in my first report, the grant application portion of the ARRA process was extremely challenging for state agencies, due to the number of grant opportunities and the time involved in applying for those grants. As the application period draws to a close (although a number of ARRA grant applications are under consideration by federal agencies, most application deadlines have passed), it appears that state agencies were successful in submitting applications for all formula grants and all competitive grants for which Delaware state agencies could reasonably apply.

With respect to competitive grant opportunities, state agencies were encouraged to apply for funds that could help provide services and economic stimulus to Delaware, but discouraged from applying for ARRA grants that would create unsustainable new costs in state government when ARRA funds expired.

The most significant ARRA grant application to be filed since my last quarterly report was the Department of Education's Race To The Top grant application. It was the single largest competitive ARRA grant application filed by Delaware, and easily the most complex with respect to its substance and the number of third parties whose involvement was required. Secretary Lowery and your staff deserve a great deal of credit for the quality of the application that was submitted and the broad-based support they earned from teachers, school districts, and the community.

ENCOURAGEMENT OF PRIVATE SECTOR

The state has continued its efforts, described in my last report, to aggressively encourage the business community to take advantage of the grant, loan, and tax credit opportunities provided by ARRA. Since the last report we have put on additional forums, put new video material on the state's ARRA web site, and issued additional press releases alerting businesses to particular opportunities. Last month, a press release was issued highlighting SBA loans, bonding assistance, and energy efficiency subsidies available to small businesses.

USE OF FEDERAL FUNDS

There is obviously an interest in quickly spending ARRA funds in order to allow them to help stimulate the economy. However, we take very seriously our responsibility to carefully screen the spending of ARRA funds and track and report on the spending of those funds, which places some limits on how quickly the funds can be spent.

Delaware entities had been awarded approximately \$1.48 billion in ARRA funds as of January 14, 2010. Of that amount, \$968 million is administered by the State of Delaware, and as of January 14, 2010 the state had spent or encumbered at least \$360 million of that amount.² It is important to remember that this \$968 million does not include significant portions of the stimulus package which are not administered by the state, including funds that are directed to local governments, funds that are made available directly to private entities, funds made available directly to colleges and universities, and personal income tax cuts.

- As described in more detail below, more than half of the \$968 million awarded to the state consists of (a) funds whose sole purpose is to help close the state's budget deficit, and (b) funds that must be transferred directly to public schools and universities.
- Of the \$968 million in ARRA funds administered directly by the state, 36% is money that is used solely to close the state's budget deficit, in large part through the federal government's increase in its share of the cost of the Medicaid program. A much smaller percentage of these direct state ARRA funds have been spent than was reported in my last report, because the new figure includes a significant amount of Medicaid funds for the remainder of the current fiscal year and next fiscal year that cannot be spent until bills for medical treatment are received. This bookkeeping gap between direct state funds available and direct state funds spent accounts for the largest component of the gap between total ARRA funds available and total ARRA funds spent or encumbered (this bookkeeping gap makes up 31% of the total gap between funds available and funds spent or encumbered).
- Of the total ARRA funds received by Delaware to date, 19.5% of those funds are being transferred directly to public education institutions (including local school districts, colleges, and universities). This funding level reflects the strong emphasis in the federal stimulus package on maintenance of teaching resources in K-12 and university classrooms.³ By law, the state has no authority over how public schools and universities use these stimulus funds,

² With respect to these statistics and others in this report, the state is continuing to review the accuracy of federal reports submitted, and is likely to make small adjustments and updates in those reports on an ongoing basis over the next several days. It is not expected that any of these corrections will affect the overall trends identified in this report.

³ In addition to these amounts, at least another \$59 million has been granted directly to Delaware institutions of higher learning, the vast majority of which is made up of research grants to the University of Delaware.

other than to ensure that they are used in compliance with very broad federal regulations.

- There is a substantial gap between the amount of education funding awarded and the amount of those funds that are encumbered or expended—only 18% of the funds awarded have been spent or encumbered. This gap is largely a product of the manner in which those funds are distributed—a substantial portion of the funds are used to pay salaries and intermittent contract fees, so the funds are encumbered and expended gradually over the life of the grants. Most local school districts did not begin spending these funds in earnest until the beginning of the current school year, just four months ago.
- When the bookkeeping gap between Medicaid funds awarded and spent is combined with the bookkeeping gap between education pass-through funds awarded and spent, the combined total makes up 56% of the total gap in Delaware between ARRA funds awarded and ARRA funds spent.
- The percentage of total ARRA funds dedicated to DelDOT road and transit projects remains virtually the same as in my last report: approximately 15% of funds administered by the state.
- Funds going directly to close the state deficit, DelDOT construction funds, and public education pass-through funds make up approximately 70% of the total stimulus funds administered by the state. The largest components of the remaining funds are made up of:
 1. Funds that directly augment public benefit programs targeting Delawareans in economic distress. These funds include enhancements to the state's SNAP (nutrition assistance) program, enhancements to the state's unemployment benefit and replenishment of the state's available unemployment compensation funds, and worker training funds for unemployed workers. In total, these funds make up over 10% of the total ARRA funds.
 2. Funds for energy conservation projects, including weatherization of homes and state buildings (approximately 4% of total)
 3. Funds provided to local governments for clean water and drinking water projects (approximately 4% of total).
 4. Public housing construction and enhancement funds (approximately 3% of total).

As explained above, the majority of the gaps between funds awarded and funds spent/encumbered are the result of bookkeeping practices. Other gaps are caused by policy decisions—as was discussed in my October report, DelDOT made a policy decision to concentrate approximately 40% of its ARRA funds in projects with long-term economic benefit which would take longer to get underway. This decision accounts for much of the gap between DelDOT funds awarded and DelDOT funds spent.

An area of continued concern with respect to the responsible but prompt expenditure of ARRA funds is the almost \$42 million in ARRA funds available to the state for expenditure on energy conservation projects. The slow expenditure of these funds was identified as a concern in my October, 2009 report. Significant progress has been made since that time on the expenditure of

funds for weatherization of low-income homes, as the Department of Health and Social Services has accelerated its weatherization program. However, similar progress has not occurred with the State Energy Program or the state's portion of the Energy Block Grant. As of January 14, 2010, the state had spent/encumbered only \$103,000 of its \$24.2 million State Energy Program grant, and had neither spent nor encumbered any of its \$3.8 million Energy Block Grant. DNREC and the State Energy Utility should take immediate, concrete steps to get these programs underway.

OVERSIGHT OF STIMULUS SPENDING

The state has continued to follow the rigorous method of pre-screening ARRA-funded expenditures described in my October report. An employee of the Office of Management and Budget personally reviews each purchase order that comes to the state involving expenditure of stimulus funds. Any purchase order that appears to be anything other than a routine expenditure is routed to a supervisor at OMB and my office for an independent review. I am not aware of any other state that is exercising this level of oversight.

A relatively small number of purchase orders have been flagged through this process. We believe that the existence of such a rigorous review program has caused state agencies to be scrupulous in documenting their applications and careful to avoid seeking funds for impermissible purposes. We will continue to vigorously review purchase orders relating to the use of stimulus funds.

One area of specific concern regarding expenditure oversight is our local school districts and charter schools. As mentioned earlier, an enormous amount of federal stimulus funds are being passed through the state directly to these entities, and the state's legal and logistical ability to monitor the spending of these educational dollars is limited. Our level of concern is heightened by the difficulty that we encountered in obtaining compliance from local school districts and charter schools with their first federal reporting deadlines in October. For these reasons, we asked the State Auditor, who has expansive legal authority to monitor school district and charter spending and staff expertise, to concentrate his stimulus oversight efforts in this area beginning last July. To date, we have not received any indication from the Auditor of any irregularities with respect to school districts or charter schools.

TRACKING OF ARRA SPENDING

Last fall, as the first reporting deadline for reporting of ARRA funds began to approach, the state invested significant time in ensuring compliance by state and local agencies with the federal reporting obligations associated with the receipt of ARRA funds. This effort included scores of meetings, teleconferences, and webinars, and a statewide exercise conducted last September to determine state agencies' ability to comply with the federal government's first comprehensive reporting deadline earlier this month.

This effort appears to have paid dividends with respect to ensuring compliance with ARRA filing deadlines. In October, every Delaware state agency filed timely ARRA reports, and all but a small number of local government and local school districts filed on time. Even those that filed late in October got their reports in sufficiently early for them to be included in the federal government's first release of ARRA statistics. This year, for the second reporting period, that performance has improved: once again every state agency filed in a timely way, and it appears that all local governments and all but one local school district (a charter school) filed on time.

JOB CREATION/RETENTION

Comparing the jobs created or retained by ARRA in the last quarter of calendar year 2009 to those jobs created or maintained in the third quarter of 2009 is difficult for two reasons. First, unlike last October, the federal government has not released the job creation numbers for federal entities in Delaware (such as Amtrak and the Dover Air Force Base) in advance of its national release of all job creation numbers. This report will assume that the number of jobs created by federal ARRA projects in Delaware at least remained constant during the past quarter, based in part upon the nature of many of the federal jobs in question (substantial physical renovations to Amtrak and DAFB facilities that would likely take more than three months to complete). I will issue a short supplemental report when ARRA statistics for job creation by non-state entities are released and we have an opportunity to analyze them.

The second reason that comparing job statistics in this quarter to job statistics in the prior quarter is difficult is that the federal government changed the method by which ARRA recipients are required to calculate job creation and retention. Last October, recipients were required to make a subjective judgment as to whether a particular job would have been lost or never created without the receipt of ARRA funds. For the last quarter of calendar year 2009, the federal government simplified the calculation: if a job is funded with ARRA funds, then it is counted as a job created or retained under ARRA. The federal government also changed its rules to require that the job counts reflect a 'snapshot' of the past quarter, rather than trying to smooth the job numbers over the life of the ARRA program. That accounting decision has caused some volatility in the numbers, as will be seen below in categories such as 'summer jobs.'

With those caveats, it appears that job creation and retention has expanded under ARRA during the prior quarter. Based on the statistics currently on hand, it is possible to estimate that between 1,493 and 4,046 jobs have been created or retained in Delaware through ARRA funds, with a significant number of other jobs created or retained that cannot be estimated because data on those jobs is not collected by the state. As with my last report, jobs created and retained by ARRA fall into three categories: jobs that can reliably be counted and are reported to the federal government from ARRA-funded programs; jobs in state government that were retained due to the use of ARRA funds to balance the state budget; and jobs created or retained as a result of ARRA's tax and loan assistance to private businesses, direct income subsidies to unemployed Delawareans, and tax cuts for families. The first category is relatively easy to estimate with reported data, the second category more difficult, and the third sufficiently difficult that this report does not even attempt to provide an estimate.

Delaware's job creation/retention reports for the last quarter of calendar year 2009—which, again, do not include information we had last October about job creation/retention at federal facilities—show an increase in the number of jobs retained and created by ARRA, and also a shift in the type of jobs created and retained by ARRA. Specifically:

- There has been an increase in state-administered ARRA-funded jobs reported to the federal government, from 852 in the third quarter of calendar year 2009 to 1296 in the fourth quarter. On its face, this is a 50% increase. But again, because of the change in the reporting methodology used by the federal government, the magnitude of the

increase must be viewed with great caution. A review of the categories where the increase occurred suggests that there has been a real increase in actual jobs created. In other words, the increase has occurred in state entities where expenditure of ARRA funds substantially increased during the fourth quarter. But because of the change in counting methodology, the increase may not be as large as it appears.

- The largest increase in job creation/retention statistics has been in public education. This increase has come in two areas. First, the education stabilization account reported an increase in jobs from 205 in the third quarter to 577 in the fourth quarter. My analysis of this information is that it reflects purely job retention, not job creation: these are jobs that local school districts would have had to eliminate due to drops in public funding, but were able to retain because those funding drops were offset by ARRA funds. This is one area where the federal government's new job counting rules more accurately reflect total jobs, but may exaggerate the change between quarters as the counting system changed: jobs funded through education stabilization were unlikely to have been eliminated in the third quarter of 2009 and then replaced in the fourth quarter.
- The second area of increase in education jobs is more likely to be a 'real' increase: education jobs created or retained through new ARRA programs including Title 1 funds for education of economically disadvantaged students (an increase of 51 jobs), public school special education (an increase of 25 jobs), pre-school special education (an increase of 16 jobs), and infant and toddler special education (increase of 3 jobs). These 97 jobs reflect the fact that school districts began to spend these new program funds in September when the new school year started.
- The other area of most significant job increase has been in weatherization of low-income homes, where an increase of 123 jobs from the third quarter to the fourth quarter is reported. This number makes sense, as spending in this area accelerated during the fourth quarter.
- The fourth quarter saw a 33% increase in highway construction jobs funded by ARRA. Because of the new federal counting system, the statistics for highway construction jobs and other ARRA-funded construction may be somewhat volatile in the future, as some jobs are completed and others begin—but they will give a more accurate picture of the number of men and women who are actually out on work sites.
- Other areas that showed material increases in job creation/retention include Delaware National Guard, the clean water revolving fund (35 jobs constructing clean water projects for local governments), child care (reflecting jobs created or retained through subsidies to child care facilities), community services block grants (29 jobs created or retained through grants to local non-profit organizations), public safety (43 public safety jobs created or retained—primarily retained—through federal Byrne criminal justice grants), Department of Labor employment services, and arts programs.
- By far the largest *decrease* in jobs created or retained has been in the dislocated workers category in the Department of Labor, which includes funding for youth summer jobs programs. And that, in fact, is the reason for the drop—summer ended, and with it the summer jobs.
- Other areas that showed job decreases included Americorps (which also reflects the ending of summer jobs), and construction of drinking water projects. We are investigating the drop in the drinking water project job calculation, it likely reflects

the fact that one of the drinking water construction projects was completed some time during the fourth quarter.

Viewing these numbers in total, my assessment is that the total number of jobs created or retained in Delaware by ARRA in the fourth quarter of 2009 was larger than those created or retained in the third quarter, but that it was probably not 50% larger.

The analysis of the second and third categories of job creation is unchanged from my last report. We are still in the middle of the fiscal year that includes a state budget balanced in part by \$153 million in stimulus funds. For reasons explained in my last report, this \$153 million can be assumed to have created or retained anywhere between zero and 2,550 jobs in the current fiscal year, depending upon one's assumptions about how the legislature and Governor would have dealt with that \$153 million shortfall absent the ARRA funds becoming available. And, as with my last report, there is a significant category of job creation/retention reflecting jobs affected by ARRA's tax and loan assistance to private businesses, direct income subsidies to unemployed Delawareans, and tax cuts for families, that some analysts suggest can increase the total number of jobs created by ARRA by 36%, but for which we do not assume any jobs created or retained. Therefore, this report *undercounts* jobs in at least one respect, by declining to estimate jobs indirectly created by the private sector financial assistance provided by ARRA.

With all the aforesaid assumptions—including that federal ARRA job creation would at least remain constant from third quarter of 2009 through the fourth quarter—available data allows us to estimate that between 1,493 and 4,046 jobs were created or retained by ARRA funds in the fourth quarter of calendar year 2009. Whether the figure is closer to the higher or lower end of this range is dependent upon one's predictions regarding what the legislature would have done absent the ARRA funds. And in any event, this range understates the amount of job creation and retention in Delaware by as much as 50% because it cannot include jobs created or retained due to tax and other benefits flowing directly to private businesses and individuals.

TRANSPARENCY

Our goal with respect to transparency is straightforward: to the extent that technology allows, we want Delawareans to be able to see every ARRA dollar that Delaware seeks, and to be able to trace every ARRA dollar that is spent by the state.

Delaware has adopted a very ambitious transparency policy. Our specific goal is to post every ARRA grant application submitted by a state government agency on the state recovery web site, and to publish on the web site every State of Delaware purchase order involving the use of stimulus funds, with the exception of purchase orders that contain confidential personal information.

Delaware's recovery web site has significantly improved since my October report. Visitors to the Delaware recovery web site can now view many purchase orders for ARRA-funded state purchases on-line. The posting of these purchase orders is an ongoing and extremely time-consuming process, but combined with the goal of posting of all grant applications, we believe that it makes Delaware's web site one of the most transparent in the country. There is no comprehensive study of state ARRA web sites, but we are not aware of any others that post both grant applications and purchase orders online.

The web site has also added a mapping feature since last quarter which allows visitors to graphically view the locations of many ARRA projects, and features a number of video seminars targeted at the private sector to explain how to gain access to ARRA funds.

WOMEN AND MINORITY OWNED BUSINESSES

Although the state has an Office of Minority and Women Business Enterprise responsible for advertising all state opportunities to women and minority owned businesses, we have attempted to augment that office's efforts with respect to ARRA opportunities. It is difficult to gauge our success because of the difficulty in Delaware of tracking contracts issued to women and minority owned businesses.

There has been active participation by women and minority owned businesses in the general forums that our office has organized with DEDO, but we have also targeted additional efforts specifically at these businesses. There have been two major forums for women and minority owned businesses in Delaware since passage of the ARRA, and we have made presentations at both forums, focused on stimulus opportunities that might be of special interest to women and minority owned businesses. We have posted a video of our most comprehensive briefing for women and minority owned businesses on the state's Recovery web site.

Recently, my office along with Delaware's Office of Minority and Women Business Enterprise and the federally-funded ARRA Advocacy Office in Philadelphia signed a Memorandum of Understanding to help provide access to ARRA opportunities for minority and women owned businesses. The goal of this partnership is to better inform minority and women owned businesses about ARRA opportunities and to help increase the numbers of these businesses that respond to RFPs and bid for contracts. Our partnership with that office will create opportunities for Delaware businesses across state lines.

It is difficult to measure the success of our efforts, because outside of DelDOT, Delaware does not have formal mechanisms in place to effectively track the issuance of contracts to minority and women owned businesses. DelDOT, which has specific minority and women owned business contracting goals incorporated into its federal funding opportunities, reports that it is meeting those goals at the current time, and that the number of women and minority owned businesses seeking certification as such has dramatically escalated since ARRA outreach began. There is anecdotal evidence on other fronts that our efforts are bearing fruit: in the low-income weatherization program, which is one of the programs that presents significant new contracting opportunities, we are informed by the contract administrator that half of the contractors who have entered the program since the passage of ARRA have been women and minority owned businesses. But absent a statewide tracking mechanism for issuance of contracts to women and minority owned businesses, there is no precise way to empirically assess our efforts.